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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.,
Petitioner,

VS.

HONORABLE NICHOLAS G. BYRON, JUDGE,
Circuit Court of Madison County, Illinois,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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TABLE OF CONTENTS

	Page
Table of Authorities	ii
Argument	1
1. The Petition For Writ of Certiorari Is A Timely Application For Review Of A Final Order Of The Illinois Supreme Court	1
2. Judge Byron's Order Granting Garien's Motion To Reinstate Violates The Provisions Of Both Article 4, Section 1 Of The United States Constitution And 45 U.S.C. § 56	4
Conclusion	5

TABLE OF AUTHORITIES

Page

Cases:

Michel v. Gard, 130 Ill. Dec. 164, 537 N.E.2d 1375 (Ill. 1989) 3

Moore v. Strayhorn, 114 Ill.2d 538, 104 Ill. Dec. 230, 502 N.E.2d 727 (1986) 3

Orenic v. Illinois State Labor Relations Bd., 130 Ill. Dec. 455, 537 N.E.2d 784 (Ill. 1989) 3

People ex rel. Foreman v. Nash, 112 Ill. Dec. 714, 514 N.E.2d 180 (Ill. 1987) 3

World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286 (1980) 2

Statutes:

45 U.S.C. § 56 3,4

Miscellaneous:

Article 4, Section 1 of the United States Constitution .. 2,4

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ARGUMENT

1. The Petition For Writ of Certiorari Is A Timely Application For Review Of A Final Order Of The Illinois Supreme Court

Petitioner Chicago and North Western Transportation Company ("CNW"), responded to a "Motion to Reinstate" filed in Madison County, Illinois by documenting that Marlin Garien's lawsuit against it had already been adjudicated in Iowa. When Respondent Judge Nicholas Byron rejected petitioner's claim, CNW then sought, but was denied, a writ of prohibition in the

Illinois Supreme Court to require Judge Byron to give full faith and credit to the Iowa final judgment. By denying CNW's request for a writ of prohibition or a supervisory order, the Illinois courts have denied CNW the protections afforded by Article 4, Section 1. Despite the clear application of the protections of full faith and credit, the Illinois judiciary had determined that it will not honor the judgment order issued by Iowa and that CNW must defend against Garien's allegations. CNW now faces protracted discovery and a civil trial in Illinois in a case that has been finally adjudicated in Iowa.

The briefs filed by Judge Byron and Garien oppose CNW's petition primarily on the grounds that it is premature. Both briefs contend that Judge Byron's ruling should not be regarded as a final disposition of the federal questions raised by CNW, since Illinois appellate courts could yet revisit the issue on post-trial review.

Respondents' evasions do not meet the merits of CNW's petition. As in *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286 (1980), the adverse order at issue terminated an independent proceeding which had advanced to a state's highest appellate court and by which the petitioner had unsuccessfully sought to assert its federal constitutional rights. Thus, contrary to the opposition briefs, CNW's petition does meet the criteria for the issuance of a writ of *certiorari*.

Illinois is *not* entitled to infringe upon the procedural and substantive constitutional guarantees vouchsafed CNW by disregarding the Iowa judgment. Illinois may *not* compel CNW's renewed participation in a previously resolved civil proceeding by suggesting that Illinois procedure will eventually offer CNW an opportunity to obtain a hearing regarding the same legal issue already adjudicated in its favor in Iowa. Illinois may *not* provide a forum for the *de novo* resolution of the statute of limitations issue already resolved in CNW's favor; Illinois may *not* reach a contrary decision in the same suit involving the same parties.

The precedent cited by Garien in support of Judge Byron's alleged discretion is not on point. Nothing in *Michel v. Gard*, 130 Ill. Dec. 164, 536 N.E.2d 1375, 1379 (Ill. App. 3rd Dist. 1989), even suggests that a court has discretion to "reinstate" a case already finally adjudicated in the courts of a sister state. Whatever discretionary authority Judge Byron may generally possess, he had absolutely no discretion to grant "reinstatement" in the case at bar after a final judgment has been rendered against Garien in a sister state. A state trial judge has no discretion to violate the federal constitution or to operate in derogation of the clear mandates of the Federal Employer's Liability Act, which contains a three year statute of limitation. 45 U.S.C. § 56.

A writ of prohibition is always appropriate to prevent a court from acting beyond its legitimate authority. A trial court may not exercise discretion in a context in which, as a matter of law, it has no authority to act. Cf. *Orenic v. Illinois State Labor Relations Bd.*, 130 Ill. Dec. 455, 464, 537 N.E.2d 784 (Ill. 1989). Certainly, a court acts beyond its legitimate authority when it allows a party to pursue a lawsuit in which a final judgment has already been rendered.

Likewise, Garien's citations do not support his characterization of CNW's motion as an attempt "to circumvent the normal appellate process." (Garien Br., p. 5). In *People ex rel. Foreman v. Nash*, 112 Ill. Dec. 714, 514 N.E.2d 180 (Ill. 1987), the moving party was denied relief because he sought an extraordinary writ in the Illinois Supreme Court after fully prosecuting an earlier appeal. Likewise, in *Moore v. Strayhorn*, 114 Ill.2d 538, 104 Ill. Dec. 230, 502 N.E.2d 727 (1986), the defendant sought leave to file a petition for an original writ, instead of pursuing the direct appeal provided for by Illinois civil procedure. In contrast, here no one disputes that CNW has timely pursued the only appellate relief available, if it is to avoid being compelled to participate in the adjudication of a case that has already been finally resolved.

Indeed, Garien's unflattering characterization more accurately describes his own conduct. CNW obtained a final judgment against Garien's FELA claim in Iowa. However, Garien, who is an Iowa resident, did not appeal in Iowa, Instead, he truly sought "to circumvent the normal appellate process" by successfully persuading Judge Byron to "reinstate" the very same FELA lawsuit in Illinois! Faced with having to defend against a lawsuit already finally resolved in Iowa, CNW was compelled by Garien's circuitous conduct to seek a writ of prohibition against Judge Byron. However, by denying CNW's petition, the Illinois Supreme Court has instead placed its imprimatur on Judge Byron's ruling.

2. Judge Byron's Order Granting Garien's Motion To Reinstate Violates The Provision Of Both Article 4, Section 1, Of The United States Constitution And 45 U.S.C. § 56

Garien does not even address the application of Article 4, Section 1 of the United States Constitution or 45 U.S.C. § 56. Instead, Garien's rebuttal is limited to the wholly unsupported allegation that "reinstatement" was justified because CNW reneged on a purported "agreement" to waive the federal statute of limitations provided for in 45 U.S.C. § 56.

CNW flatly denies that it ever agreed to waive the applicable statute of limitations as a condition to obtaining dismissal of Garien's original Illinois lawsuit on the grounds of *forum non conveniens*. Moreover, CNW is also compelled to observe that such an alleged "agreement" would be utterly irrelevant.

If there was, in fact, even a scintilla of evidence to support such an allegation, the appropriate forum to resolve the effect of such an alleged "agreement" was in the Iowa courts. By the time the case reached Judge Byron, he was confined to the record before him. Most particularly, he was confronted with a final Iowa

judgment in CNW's favor from which Garien did not appeal. That judgment is entitled to full faith and credit in the Illinois courts.

In short, Garien's unsupported allegations have no bearing on CNW's petition. CNW's petition concerns whether a state court judge may flatly ignore fundamental provisions of the United States Constitution and whether he may take it upon himself to abrogate a federal statute of limitations. Neither of the opposing briefs addresses these issues.

CONCLUSION

For the reason stated herein and in CNW's Petition for Writ of Certiorari, the Court should issue a writ of certiorari to the Supreme Court of Illinois.

Respectfully, submitted,

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